

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Federal Trade Commission,
5 Plaintiff

6 vs.

7 Ideal Financial Solutions, Inc., et al.,
8 Defendants
9

Case No.: 2:13-cv-143-JAD-GWF

Order re: Doc. 207

10 Receiver Thomas McNamara applies for an interim payment of attorney's fees and
11 costs for work performed as the Receiver in this trade enforcement case. Doc. 207. He seeks
12 \$7,180.37 for his accounting fees, plus payment of \$59,847.65 in attorney's fees and
13 \$6,935.52 in expenses incurred by his counsel in this matter. *See id.* The motion is
14 unopposed, and McNamara has complied with both the plain language of the preliminary
15 injunction and this district's local rules. Thus, I grant his motion and authorize disbursement
16 of the requested amounts from the seized funds.

17 **Background**

18 This case centers around the Federal Trade Commission's allegations that defendants
19 charged consumers large, unauthorized electronic fees through third-party merchant
20 accounts. Doc. 32. The court entered a preliminary injunction against many of the
21 individual defendants in this case, enjoining them from transferring any cash assets, ordering
22 them to relinquish specific funds to the receiver, and authorizing the receiver to manage these
23 assets. Doc. 18.

24 Receiver McNamara previously moved for approval of attorney fees and costs
25 incurred as a result of this suit, Doc. 165, but that motion was denied without prejudice
26 because the Receiver failed to comply with Nevada's Local Rule 66-6 by affirming that
27 McNamara "has not entered into any agreement, written or oral, express or implied, with any
28 other person concerning the amount of compensation paid or to be paid from the assets of the
estate, or any sharing thereof." Doc. 201 at 1. McNamara now re-submits his motion. Doc.

207. I find this renewed motion to have been adequately briefed and capable of disposition without oral argument.¹

Discussion

Federal Rule of Civil Procedure 66 governs the appointment of receivers and specifies that “the practice in administering an estate by a receiver or similar court-appointed officer must accord with the historical practice in federal courts or with a local rule.”² The Nevada local rules provide that “A receiver shall not employ an attorney, accountant, or investigator without first obtaining an order of the Court authorizing such employment. The compensation of such persons shall be fixed by the Court, after hearing, upon the applicant’s verified application setting forth in reasonable detail the nature of the services. The application shall state under oath that the applicant has not entered into any agreement, written or oral, express or implied, with any other person concerning the amount of compensation paid or to be paid from the assets of the estate, or any sharing thereof.”³ “The court appointing [a] receiver has full power to fix the compensation of such receiver and the compensation of the receiver’s attorney or attorneys.”⁴ Generally, the Ninth Circuit reviews a district court’s fee determination for abuse of discretion.⁵

Section XI(J) of the Court’s preliminary injunction provides for the appointment of a receiver, and authorizes the receiver to request certain fees. Doc. 18 at 16. The receiver is authorized to “[c]hoose, engage, and employ attorneys, accountants, appraisers, investigators, and other independent contractors and technical specialists, as the Receiver deems advisable or necessary in the performance of duties and responsibilities[.]” *Id.* Additionally, Section

¹ Nev. L.R. 78-2.

² Fed. R. Civ. Proc. 66.

³ Nev. L.R. 66-6.

⁴ *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934); *S.E.C. v. Schooler*, 2013 WL 5945051, at *2 (S.D. Cal. Nov. 5, 2013) (quoting *Webster*).

⁵ *United States v. United Foam Corp.*, 618 F.2d 577, 580 (9th Cir. 1980); see *In re San Vicente Medical Partners Ltd.*, 962 F.2d 1402, 1409 (9th Cir. 1992).

1 XVI of the Preliminary Injunction provides for the compensation of the receiver and his
2 professionals:

3 The Receiver, and all persons or entities retained or hired by the Receiver as
4 authorized under this Order, shall be entitled to reasonable compensation for
5 the performance of duties undertaken pursuant to this Order and for the cost
6 of actual out-of-pocket expenses incurred by them from the Assets now held
7 by or in the possession or control of, or which may be received by,
8 Receivership Entities. The Receiver shall file with the Court and serve on the
9 parties a request for the payment of reasonable compensation at the time of
10 the filing of any report under this Order. The Receiver shall not increase the
11 fees or rates used as the bases for such fee applications without prior approval
12 of the Court.

13 Doc. 18 at 19. In support of his application, McNamara submits his declaration, which sets
14 out the fees and expenses incurred by both himself and the attorneys retained on his behalf,
15 as well as a detailed explanation of the actions taken in furtherance of the receivership. Doc.
16 207-1. McNamara also declares that his fees, and those of his attorneys, have been
17 discounted 15% from their customary rates. *Id.* at 3. Finally, he declares that as to his law
18 firm, “multiple administrative and other tasks . . . have not been billed.” *Id.* To this
19 declaration McNamara attaches invoices detailing the services for which he and his attorneys
20 seek compensation. Docs. 207-2, 207-3. Finally, in compliance with Local Rule 66-6,
21 McNamara’s declaration includes the appropriate affirmation that he has not entered into any
22 agreement regarding “the amount of compensation paid or to be paid from the assets of the
23 estate, or any sharing thereof.” Doc. 207-1 at 4. As of the date of McNamara’s application,
24 the receivership had cash funds of \$948,324.22. Doc. 207-1 at 3.⁶

25 I find the motion, McNamara’s declaration, and the supporting exhibits satisfy
26 McNamara’s request for \$7,180.37 in receiver fees, as well as payment of \$59,847.65 in
27 attorney’s fees and \$6,935.52 in expenses incurred by his counsel in this matter. These fees
28 and costs are awarded in full.

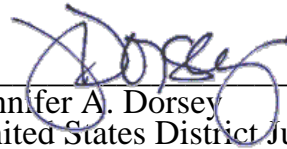
⁶ On November 11, 2014, McNamara submitted a Seventh Interim Receiver’s Report, indicating that “The receivership bank account has a current balance of \$948,580.07 (funds collected of \$1,144,821.78 less disbursements of \$196,241.71).” Doc. 213 at 4. This marginal difference in account balance does not alter the disposition of the motion currently before me.

Conclusion

Accordingly, with good cause appearing and no reason for delay,

It is HEREBY ORDERED that the Interim Application of Receiver for Order Approving Fees and Expenses of the Receiver and His Professionals [Doc. 207] is **GRANTED**. The Receiver is directed to pay the invoices in the amounts of: \$7,180.37 in receiver fees, \$59,847.65 in attorney's fees to the Receiver's counsel, and \$6,935.52 in expenses incurred by the Receiver's his counsel in this matter.

DATED: December 1, 2014



Jennifer A. Dorsey
United States District Judge